

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

IN RE WACHOVIA CORPORATION
ERISA LITIGATION

MASTER FILE: 3:09-CV-00262-MR

THIS DOCUMENT RELATES TO:
All Actions

**JOINT MOTION TO MODIFY THE FINAL
ORDER APPROVING CLASS ACTION SETTLEMENT**

The parties respectfully submit this Joint Motion to Modify the Final Order Approving Class Action Settlement (the “Final Order”), which was issued on October 24, 2011, in order to correct an inconsistency between the Final Order and Plan of Allocation.

In paragraph 15 of the Findings of Fact in the Final Order, the Court sets forth its Findings Regarding the Plan of Allocation and, in describing the formula under the Plan of Allocation, the Court refers to the “Class Period” on several occasions in clauses (i), (ii), (iii) and (iv). To eliminate an inconsistency between the Final Order and Plan of Allocation, we respectfully request that the Court amend paragraph 15 of the Findings of Fact in the Final Order by replacing it with the following text, which incorporates the specific text located in paragraph (B)(i) of the Plan of Allocation (*see* Docket No. 154-3):

Under the proposed Plan of Allocation, the Net Settlement Amount will be distributed among the Settlement Class members in accordance with their alleged losses. Each Settlement Class member's Net Loss will be the total of the member's units of Wachovia common stock Net Loss, which will be, for each Settlement Class member the result obtained by calculating $A + B - C - D$, where:

A = the dollar amount of the Settlement Class member's Plan account balance invested in units of Wachovia stock on: (i) May 8, 2006 for the WSP; and (ii) October 1, 2007 for the AGE Plan;

B = the dollar amount of additional purchases of units of Wachovia stock: (i) during the Class Period for the WSP, and (ii) from October 1, 2007 through and including December 31, 2008 for the AGE Plan;

C = the dollar amount debited from the Settlement Class member's Plan account balance resulting from any and all dispositions (*e.g.*, sales, withdrawals, loans, etc.) of units of Wachovia stock: (i) during the Class Period for the WSP, and (ii) from October 1, 2007 through and including December 31, 2008 for the AGE Plan; and

D = the dollar amount of the Settlement Class member's Plan account balance in units of Wachovia stock on December 31, 2008.

Rather than referring to the "Class Period" in the Plan of Allocation, the Plan of Allocation uses different dates for the Wachovia Savings Plan ("WSP") and the A.G. Edwards, Inc. Retirement and Profit Sharing Plan ("AGEP") because WSP participants had the opportunity to invest in the Wachovia Stock Fund during the entire Class Period (May 26, 2006 through December 31, 2008), but AGEP participants only had the opportunity to invest in the Wachovia Stock Fund

beginning October 1, 2007—the effective date of the merger between Wachovia and A.G. Edwards.

For the reasons set forth above, the parties respectfully request that the Court amend the Final Order as stated herein.

Respectfully Submitted,

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